Appeal from Appellate Decree No.303 OF 1989

Against the judgment and decree dated 27.3.1989 passed by Sri Shyam Narayan Shukla, 2nd Addl. District Judge, Arrah in T. A. No. 44 of 1984 confirming the judgement and decree dated 31.7.1984 passed by Sri Rameshwar Prasad, 2nd Sub-Judge, Arrah in T. S. No. 108/81.

RAMCHALAN SINGH & ORS ----------Appellants

Versus

SHUKHDEO SINGH & ORS ---------- Respondents

For the Appellants : Mr. V. Nath, Adv.
For the respondents : M/s Ram Kumar Sharma, Sr. Adv., Mrigendra Kumar, Adv. Ramashish, Adv.,

P R E S E N T

THE HON'BLE MR. JUSTICE GHANSHYAM PRASAD

Ghanshyam Prasad, J.

1. This appeal by the plaintiff-appellant has been preferred against the judgment and decree dated 27.3.1989 passed by 2nd Additional District Judge, Arrah in Title Appeal No. 44 of 1984 thereby learned Additional District Judge has dismissed the appeal and confirmed the judgment and decree dated 31.7.1984 passed by 2nd Sub-Judge, Arrah in Title Suit No. 108/81.

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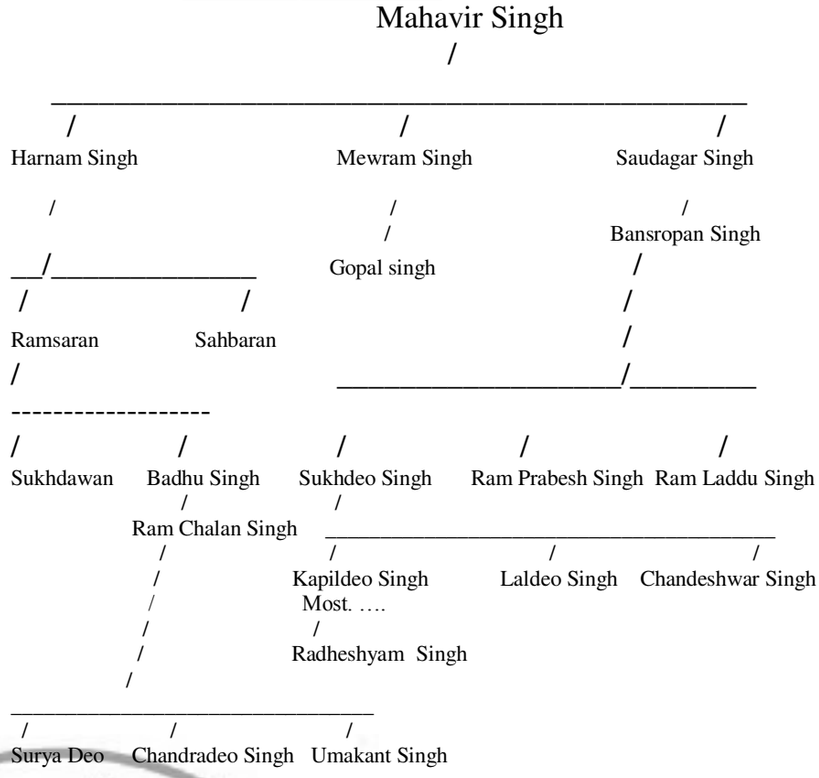
2. The plaintiff-appellant filed suit for declaration of title over Schedule (Ka) properties of the plaint and in alternative decree for partition of their share in schedule ‘Ga’, ‘Gha’ (wrongly mentioned as ‘Ka’) and ‘Cha’ properties of the plaint. Following genealogical table has been appended at the foot of the plaint:-

Genealogical Table



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3. The plaintiffs claimed themselves to be descendants in the branch of Harnam Singh and the defendants in the branch of Saudagar Singh. The further case is that Gopal Singh died about 65-66 years ago issueless leaving behind Sahbaran and Bansropan as his heirs and accordingly they came in possession over the properties of Gopal Singh half and half. All the three branches of Mahavir Singh became separate before C. S. operation and accordingly C. S. khatian was also prepared. However one khata remained joint among all the three branches and one other khata 399 remained joint in between Gopal Singh and Bansropan Singh.

4. The further case of the plaintiffs is that after death

of Gopal Singh, there was a family arrangement in between plaintiffs and defendants in 1917. The properties of Gopal Singh were partitioned half and half between them and accordingly they came in exclusive possession over their respective share of land. Schedule Ka and Schedule Kha are the properties allotted to plaintiffs and defendants respectively. However, some wrong entries were made in R. S. Khatian as a result of which dispute arose between the parties. Ultimately, the plaintiffs approached the defendants to settle the dispute and in alternative to effect partition. On refusal this suit was filed.

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5. The defendants-respondents filed written statement and contested the suit. They have denied the genealogical table given by the plaintiffs and have given another genealogical table which would go to show that Ajagaibi Singh was the common ancestor of the parties who had two sons namely Mahavir and Siaram. The plaintiffs are in the branch of Mhabavir and the defendants are in the branch of Siaram. According to them Siaram died leaving behind his two sons namely Gopal and Bansropan. Gopal Singh died issueless in 1930-31 leaving behind Bansropan as his only heir who inherited and came in possession over the entire property of Gopal Singh including the disputed property. Defendants have claimed to be descendants of Bansropan. Further, it is averred

that there was already partition by metes and bounds between Mahavir and Siaram. All the properties were partitioned except Baswari standing over an area of 1.29 acres which remained joint over which both the parties are in joint possession having share half and half irrespective of the entries made in Khatian. They have no objection in partition of Schedule Gha properties which is Baswari.

6. Learned trial court framed as many as 11 issues. However, the most important issue is issue no. 5 which is as follows;-

> "Whether the genealogical table given by the plaintiffs is correct?"

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7. The learned trial court after consideration of the oral as well as documentary evidence held that the plaintiffs have failed to prove the genealogical table. Since the relief claimed by the plaintiffs was based on inheritance from Gopal Singh and therefore, learned trial Court dismissed the suit. Being aggrieved by the decision of the learned trial Court plaintiffs preferred appeal before the District Judge and the same has also been dismissed vide impugned judgment and the judgment of the trial court has been confirmed.

8. At the time of admission following substantial question of law was framed for hearing of this appeal:-

> "Whether issue no. 9 as framed by the trial Court has been corrected decided in relation to Schedule

Cha Property?"

9. Heard learned counsel for both the parties at length.

10. In course of argument, learned counsel for the appellants left the substantial question of law formulated for decision of this appeal. It is submitted that in view of concurrent findings of both the Courts on the point of geneological table as well as on issue no. 9 he is unable to assail the decision. However, he has raised another substantial question of law with regard to partition of Baswari (Schedule 'Gha' properties). It is submitted that in paragraph 11 and 26 of the written statement, defendants- respondents have admitted joint possession over schedule 'Gha' properties as well as share of both the parties as half and half. Inspite of that both the courts refused to grant decree for partition of Schedule 'Gha' properties which is illegal and bad in law.

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11. Learned counsel for the respondents did not deny the share of plaintiffs in Schedule 'Gha' properties but supported the judgment of the learned appellate Court on the ground that both the parties have already mutually partitioned schedule 'Gha' properties half and half and they are in separate possession over respective share of land since long and therefore no decree of partition can be passed.

12. Upon consideration of the pleadings of the

parties as also the submission, this Court is of the view that the submission of the learned counsel for the appellant is perfectly justified. Both the courts committed error of law and fact by not passing the decree of partition in respect of Schedule 'Gha' properties.

13. The defendants-respondents in two paragraphs of written statement i.e. 11 and 26 in clear terms have admitted about the share and jointness of the parties in Schedule 'Gha' properties. In paragraph 11 of the written statement they have averred that at the time of partition of the family properties in between Mahavir and Siaram , Baswari having area of 1 acre 29 decimal was left joint which is still joint and parties are in possession over half and half share irrespective of entries made in C. S. Khatian. They have further stated that Baswari land is ancestral properties and not purchased land. In paragraph 26 of the written statement they have again clearly admitted that the said land has never been partitioned and is still joint in which parties have half and half share. They have further stated that they have no objection in partition of schedule 'Gha' properties accordingly to their share.

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14. In view of clear admission made by the defendants-respondents regarding schedule 'Gha' properties, lower courts ought to have decreed the suit to that extent. Both the courts have erred in not taking notice of admission.

15. In the result, this appeal is allowed in part as indicated above.

16. Let a preliminary decree be passed for partition of plaintiffs' half share in Schedule 'Gha' properties of the plaint.

17. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Ghanshyam Prasad, J.)

Patna High Court
Dated the 24th July, 2008
N.A.F.R./ Kanchan

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